

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 14, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 116, 1/8/2003; HB 134, 1/8/2003;
HB 140, 1/8/2003
Executive Action: HB 116

HEARING ON HB 124

Sponsor: REP. ALAN OLSON, HD 8, Central Montana

Opening Statement by Sponsor:

REP. OLSON opened on HB 124 stating this bill creates a special revenue account for the Department Of Justice (DOJ) on behalf of the Montana Law Enforcement Academy (Academy). He explained that the revenue would come from a surcharge for the use of the civil and criminal courts.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 25}

Proponents' Testimony:

Larry Fosfender, Director, DOJ, supported HB 124. He proposed amending the bill so that surcharges would only apply to cases in courts of limited jurisdiction and not apply to small claims. He recommended a \$10 surcharge.

{Tape: 1; Side: A; Approx. Time Counter: 28 - 75}

Kent Funyak, Undersheriff, Cascade County Detention Center, supported HB 124. He stated they sent 26 detention officers to the Academy last year costing \$1200 a person. He stressed that if the Academy is taken out of the general fund, the costs of training detention officers would fall on the County unless another method of funding is found.

{Tape: 1; Side: A; Approx. Time Counter: 76 - 91}

Bill Slaughter, Director, DOC, supported HB 124 stating approximately 240 students and 100 staff attend the Academy each year. He explained DOC and the Academy have been long time partners. He emphasized this bill is the future of law enforcement and should not be taken lightly.

{Tape: 1; Side: A; Approx. Time Counter: 92 - 114}

Troy McGee, Chief of Police, Lewis and Clark County, reluctantly supported HB 124. He concluded that the Chiefs of Police would prefer that the funding for the Academy remain in the general fund but if that is not possible, then they support HB 124.

{Tape: 1; Side: A; Approx. Time Counter: 115 - 145}

Jim Smith, Montana County Attorneys Association, supported HB 124, stating the general fund allocation to the Academy, through the Department of Justice (DOJ) is gone. He stated he is not optimistic that the two million dollars will be reinstated and therefore, it is critical to Montana law enforcement that HB 124 is passed.

Jim Oberhoffer, Montana Board of Crime Control, supported HB 124, stating he has observed the Academy grow over the years. He believes the surcharge would be an equitable way to fund the Academy.

{Tape: 1; Side: A; Approx. Time Counter: 170 - 184}

Opponents' Testimony:

Chief Justice Karla Gray, Montana Supreme Court, sadly opposed HB 124, but does support the bill's purpose of funding the Academy. Chief Justice Gray stated she will continue to work with this bill to iron problems out. She stated her only problem is the funding mechanism as it lets executive agencies back fill their budgets by imposing surcharges or user fees onto the Judicial branch. She emphasized her concern this bill would set a dangerous and unwise precedent. **Chief Justice Gray** urged a DO NOT PASS on HB 124.

{Tape: 1; Side: A; Approx. Time Counter: 185 - 265}

Mike Kadis, Mayor, Missoula, opposed HB 124, stating there are many problems with the surcharge mechanism. He explained that the surcharges come off the top with the first dollars going to the surcharges, and the last dollars go to the city. He explained that this bill turns the city into a debt collector for the State. He emphasized it would be better for Missoula to pay a straight user fee for each person sent to the Academy.

Joe Mazurek, Attorney, City of Great Falls, opposed HB 124, stressing the same concerns Mike Kadis made. He stated the City of Great Falls would prefer paying for each person who goes to the Academy and opposed the surcharge.

{Tape: 1; Side: A; Approx. Time Counter: 335 - 342}

REP. HARRIS asked Mayor Kadis whether this bill is not a decent bargain. If the cities were paying the full cost of training it would cost much more than it does today so is it not fair for the cities to pick up the balance of the cost. **Mayor Kadis** stated the cities would end up paying more than their fair share of the costs and they will end up subsidizing someone. **REP. HARRIS**

asked whether he would be amenable to increasing tuition fees. **Mayor Kadis** stated that would be a better solution than the surcharge. **REP. HARRIS** asked the sponsor, **REP. OLSON** whether he felt increased tuition would be a good alternative to imposing a surcharge.

Informational Testimony:

Mike Grayson, Deer Lodge, County Attorney's Association, stated it is a good bill and appropriate to fund the Academy without burdening local governments.

Alec Hansen, League of Cities and Towns, stated his organization would like to work with the DOJ and the Chief Justice on the amendments to make this proposed bill work.

Questions from Committee Members and Responses:

REP. NEWMAN asked Chief Justice Gray whether her opposition to the surcharge funding mechanism was based on Constitutional grounds, separation of powers; the people's access to the courts, or on policy grounds of using one branch of government to fund another. **Chief Justice Gray** responded her opposition is on policy grounds.

{Tape: 1; Side: A; Approx. Time Counter: 385 - 415}

REP. HARRIS posed a scenario to Mayor Kadis that if the cities paid the full costs of training, the costs would be greater. He further questioned whether it would not be fair for the cities to pick up the balance of the costs. **Mayor Kadis** responded that he does not know what the actual tuition is but for Missoula to break even, it would have to be over \$15,000 per student. He stated the City of Missoula would end up subsidizing someone and that would not be fair. **REP. HARRIS** asked whether Mayor Kadis would be amenable to increasing tuition fees for anyone who uses the Academy so that the full costs are covered by tuition fees. **Mayor Kadis** stated that would be more fair.

REP. HARRIS asked **REP. OLSON** to respond to Mayor Kadis's preference to pay the tuition costs rather than subsidize the rural communities. **REP. OLSON** responded that Mayor Kadis sends three to seven officers to the Academy a year. **REP. OLSON** felt that many rural communities subsidize larger cities as well. He described a scenario where rural communities send officers to the Academy; the officers move to bigger cities that pay more, thus rural communities are also subsidizing larger cities.

REP. LASZLOFFY asked Director Slaughter the actual cost of sending someone to the academy and the amount the Counties and cities pay? **Director Slaughter** responded that the basic student fee would be about \$5800. He stated DOC detention officer training costs more, \$1200, because it lasts longer, 12 weeks. Director Slaughter directed the question regarding what the counties and cities pay to Mr. Fosfender. **Mr. Fosfender** responded that at present, the local people pick up \$600 of the basic fee and the State pays the \$5800. **Mr. Fosfender** commented on Mayor Kadis' statements stating that if the City of Missoula sent 4 officers a year, it would cost them over \$24,000 so the \$10,000, Mr. Kadis mentioned the City would lose, would be substantially less as far as picking up the total cost. **REP. GALLUS** asked Mayor Kadis that the math is fuzzy. Mayor Kadis apologized for his incorrect figures. He stated he meant to say \$100,000 instead of \$10,000. He explained the City's analysis that if HB 124 should pass, they would have to collect \$100,000 and if judges act as they have, all of that would come out of their general fund. **REP. GALLUS** asked Mayor Kadis what he believes it costs the City to send one candidate. **Mayor Kadis** stated \$600, however, he stressed it would be better for the City of Missoula to pay the \$6400 in tuition times 5, even 10, than to lose \$100,000 out of their general fund.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 80}

REP. NOENNIG asked Mr. Fosfender to respond to Director Slaughter's comment that if HB 124 does not pass DOC would need another half million dollars yet the proposed surcharge in the fiscal note would raise twice that. **Mr. Fosfender** stated the total cost from the general fund for the Academy is \$2.1 million biannually. **REP. NOENNIG** reiterated Chief Justice Gray's concerns regarding surcharges. **Mr. Fosfender** stated there are a number of fees the courts collect such as clerk of court fees, a technology surcharge fee, substitution of judge fees and many others. He emphasized it is not uncommon to have the State collect the fees that go into the general fund. He stated that only people who are convicted would pay the additional surcharge to fund the law enforcement academy.

{Tape: 1; Side: B; Approx. Time Counter: 81 - 130}

Closing by Sponsor:

REP. OLSON closed on HB 124 stating the general fund is short and everyone is aware of it. He described the surcharge as a user fee emphasizing that people who are using the courts are there for a reason. He noted Chief Justice Gray's comments about back billing the Executive budget off the back of the Judiciary. He

made the point that the Academy does fund the Judiciary. He emphasized the Judiciary needs money, they will find money for the Judiciary. He closed by stating his hope is that the AG's office and the Chief Justice will work with the Academy to pass this bill.

{Tape: 1; Side: B; Approx. Time Counter: 131 - 168}

HEARING ON HB 140

Sponsor: REP. CHRISTOPHER HARRIS, HD 30, Bozeman

Opening Statement by Sponsor:

REP. HARRIS opened on HB 140 stating this bill cracks down on drunk driving by taking away the privilege to drive for 20 years and confiscating the driver's vehicle if the person is convicted of a third offense of Driving Under the Influence (DUI). If at some point the person gets a probationary license, it would be stamped with "DUI."

{Tape: 1; Side: B; Approx. Time Counter: 175 - 256}

Proponents' Testimony:

Brenda Nordland, Assistant Attorney General (AAG), Department of Justice (DOJ), supported HB 140 stating driving is a privilege not a right. She advised the committee of a case presently before the Montana Supreme Court on this topic. She supports "DUOS branding" on the driver's license of persons convicted of their third offense. This bill would put the length of the license revocation in the sentencing statutes and remove it from the administrative statutes.

{Tape: 1; Side: B; Approx. Time Counter: 258 - 373}

Jim Smith, County Attorneys Association, supported HB 140 stating the bill goes to the repeat offender who continues to drive. He stressed they are intrigued with the ignition interlock device, the variety of sanctions other than incarceration, and the shaming effect of DUOS branding.

{Tape: 1; Side: B; Approx. Time Counter: 374 - 414}

Opponents' Testimony: None

Informational Testimony:

Jim Currey, Montana Department of Transportation (MDOT), spoke on HB 140 stating there are three bills introduced at the request of MDOT. He explained that SB 19 deals with .08 blood alcohol content (BAC), SB 29 is the open container and HB 195 deals with the same subject as HB 140. He stated MDOT's reason for putting the bills forward revolves around federal funds being withheld if certain conditions are not met respecting DUI laws. MDOT is concerned about probationary licenses and urged the Committee to coordinate HB 140 and HB 195 and make sure that provision is addressed.

{Tape: 1; Side: B; Approx. Time Counter: 415 - 478}

Mike Barrett, Poet, Letter Writer, stated he wrote a book of poems which he sent to President and First Lady Bush along with some innovative legislation.

Questions from Committee Members and Responses:

REP. PARKER asked Ms. Nordland, AG, about proposed amendment 61-8-733 regarding vehicles held between two different parties. **Ms. Nordland** responded she could not speak on behalf of the DOJ on the civil forfeiture issue, as it beyond the scope of her authority. She stated the forfeiture statute has been on the books since 1995.

REP. STOKER asked Ms. Nordland, AG, about whether a third conviction forfeiture could involve valuable merchandise and whether it will cause fining problems for judges. **Ms. Nordland** responded the vehicles on third offenses are usually beaters but it is possible that valuable assets will be forfeited. **REP. NEWMAN** asked REP. HARRIS, the same question as REP. STOKER, with an emphasis on farm vehicles. **REP. HARRIS** stated a vehicle is a weapon in the hands of a drunk driver. He believes this bill notifies people that if they co-own a vehicle with someone with DUI convictions, that vehicle could be removed from their possession. He stated he is amenable to excluding farm machinery. **REP. NEWMAN** asked REP. HARRIS whether notice, provided to all Montana drivers, would cover the unconstitutional taking of property. **REP. HARRIS** replied it would.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 118}

REP. GALLUS asked Brenda Nordland about the forfeiture process. **Ms. Nordland** responded that 61-8-421 sets forth the forfeiture process. She explained that the arresting agency is responsible for executing the forfeiture and sale of the property. She

stated there is a rebuttable presumption of forfeiture providing it is not a second or subsequent offense of DUI or BAC. She stated the proceeds would be distributed to the holders of any security interests, then to the general fund of the arresting agency.

{Tape: 1; Side: A; Approx. Time Counter: 120 - 161}

REP. GALLUS asked **REP. HARRIS** asked about amending the words "shall" to "may" to allow the court's discretion on whether to seize the vehicle. **REP. HARRIS** responded that if a person is a third time DUI offender, he cannot have possession of a car.

REP. EVERETT asked **REP. HARRIS** how a co-owner could be protected. **REP. HARRIS** stated the bill's purpose is send a message that drunk driving will no longer be tolerated.

REP. SALES asked **REP. HARRIS** whether this will cost the state more money than the vehicles are worth. **REP. HARRIS** stated we won't balance the budget with the proceeds from the sale of the vehicles, it is a concern and perhaps the Denver Boot would be a solution.

REP. MALCOLM asked **REP. HARRIS** how this would work regarding Corporations. **Rep Harris** stated there is a "piercing the corporate veil" concept which could be used on DUI forfeitures.

CHAIRMAN SHOCKLEY asked **REP. HARRIS** of the effect 1-20 depending. **REP. HARRIS** stated that authority would be with the judge as opposed to the Department.

CHAIRMAN SHOCKLEY asked Ms. Nordland how many vehicles have been seized under Title 61. **Ms. Nordland** stated this is a very infrequently used statute but that vehicles have been seized on third offenses. **CHAIRMAN SHOCKLEY** asked the same question of Mr. Smith. **Mr. Smith** responded the county attorneys would not know but the sheriffs would know and that he would get the statistics. **CHAIRMAN SHOCKLEY** asked Mr. Smith to provide how many times this has been used in the last year, 2002.

REP. NEWMAN asked **REP. HARRIS** whether the proposal to mandate the forfeiture of each vehicle owned by a third or subsequent offender, is creating an unfunded mandate which the state has no ability to cover. **REP. HARRIS** stated that is possible but if so, it is an unfunded mandate that is necessary.

REP. GUTSCHE asked Ms. Nordland what the federal government thinks about probationary licenses. **Ms. Nordland** responded that

HB 195 is the repeat offender bill based on the code of federal regulations (CFR's) that require the states to enact certain measures to ensure that repeat offenders receive certain sanctions. She laid out the following elements in the CFR's that deal with repeat offenders: a second or subsequent DUI offender must have a driver license suspension for one year; the vehicle must be impounded or have an ignition interlock installed following the term of suspension, and the third element deals with alcohol assessment and treatment.

REP. THOMAS suggested language stating that low value vehicles that are forfeited be scrapped. **REP. NOENNIG** stated his concern to **REP. HARRIS** that a Denver Boot would immobilize a vehicle, eventually need to be removed, and questioned the costs. **REP. HARRIS** stated that the costs of hauling a vehicle, slapping on a boot, or crushing the vehicle could be put onto the defendant.

{Tape: 2; Side: A; Approx. Time Counter: 425 - 447}

Closing by Sponsor:

REP. HARRIS closed on HB 140 stating this is the session to get tough on DUOS's along with an enormous budget crisis. He stated that this bill attempts to make a small solution by providing some non-incarceration tools for the prosecution.

HEARING ON HB 134

Sponsor: **REP. SANDY WEISS, HD 13, Billings**

Opening Statement by Sponsor:

REP. WEISS opened on HB 134 on behalf of the Department of Corrections (DOC). **Ms. Weiss** spoke of section 3 of the bill dealing with the Inmate Welfare Fund. She explained that this money is generated from the commissary and telephone contracts. The money is controlled by the inmate council in conjunction with the Warden who has veto power. She stated this money is used for things like a new gym, death bed visits, travel for funerals, and a recreation yard in Shelby. She explained the money is held in six different accounts around the state with no equity between men and women, or prison to prison. She stated this bill would ensure the funds are distributed equally amongst all Montana prisons.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 75}

Proponents' Testimony:

DIANA KOCH, Chief Legal Counsel, DOC, supported HB 134, and Section 2 specifically. She explained this section amends the existing statute to take care of inmate trust funds regarding how inmates do their banking. **Ms. Koch** stated the DOC wants inmates to use DOC's banking system for all their transactions to curtail extortion or bulldogging at the prisons. This bill allows DOC to take a percentage of every penny that comes into an inmate's account. It allows inmates to have money coming into their account and the prison takes 80 percent of what they make for costs of incarceration and other expenses. **Ms. Koch** stated DOC has a proposed policy to allow money to be taken out of inmate's accounts and distributed as follows: take out money for child support first and the rest for restitution, court fees, service costs and sanctions for destruction of property at the prison. Ms. Koch asked if the judge in one case had not ordered the DOC to take a third of the inmate's wages for victim restitution, would DOC be allowed to do so. **Ms. Koch** stated the question was answered by Justice Treiwieler stating the prison has no right to take money out of an inmate's account for restitution. This bill would allow the DOC to take money out of any inmate's account for restitution.

EXHIBIT(juh07a01)

EXHIBIT(juh07a02)

{Tape: 1; Side: B; Approx. Time Counter: 76 - 180}

Mike Mahoney, Warden, Montana State Prison (MSP), supported HB 134 stating this would give MSP the ability to take money out of the inmate's accounts for restitution costs. He emphasized that collecting money for restitution makes inmates accountable and responsible.

{Tape: 2; Side: B; Approx. Time Counter: 181 - 315}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RICE asked Warden Mahoney if this bill would change how DOC collects restitution. **Warden Mahoney** stated that because of recent Montana Supreme Court decisions, DOC is not secure in its ability to garner wages for restitution and this bill would change that.

REP. NOENNIG asked Ms. Koch about the inmate trust account and the inmate welfare account. **Ms Koch** stated there are two different issues in HB 134, the inmate trust accounts and the inmate welfare funds. She explained sections 1 and 3 of the bill, the inmate welfare funds, change the accounting methods. She stated that at present, DOC holds the welfare funds in a fiduciary trust relationship for the inmates which is used for death bed visits, security to transport inmates to death bed visits, and prisoner's wages. The inmate council manages this money and the Warden has veto power. The bill presumes the how the inmate welfare money is spent will not change. **REP. NOENNIG** stated that the bill pretty much puts into statute what DOC presently is doing with the inmate welfare fund. **Ms. Koch** stated that is correct except the accounting method would change. Also, at present there are six inmate welfare funds, one in each prison facility. This bill would allow more equity and continuity of the money. **Warden Mahoney** stated the intent of HB 134 is to give DOC jurisdiction over multiple accounts and create one account. Each facility has an inmate council that can bring proposals to the DOC. **Warden Mahoney** explained that with the money in one pot, DOC can see the money is more equitably distributed.

{Tape: 2; Side: B; Approx. Time Counter: 316 - 510}

{Tape: 3; Side: A; Approx. Time Counter: 1 - 41}

CHAIRMAN SHOCKLEY asked Warden Mahoney about the relationship between the inmate council and the Warden's veto power. **Warden Mahoney** stated that he gets the final word but the inmates do have a voice in how there money is spent. **CHAIRMAN SHOCKLEY** asked about a proposed recreational (rec) facility that was to be built at Shelby. He stated that the prison felt the inmate welfare funds should be used to build the rec facility and the prisoners objected. **Warden Mahoney** responded that would be better answered by legal. **REP. RASER** asked **Rhonda Schaeffer, Bureau Fiscal Chief, DOC**, about the accounts and how this bill would affect them. **Ms. Schaeffer** replied that right now, all the trust account and inmate welfare funds are accounted for on the state system in a custodial account. **Ms. Schaeffer** explained this change, Section 3 of the bill, has to be done statutorily and would put the inmate welfare funds on the state system so DOC can see all the transactions that go in or out of the fund.

{Tape: 3; Side: A; Approx. Time Counter: 42 - 105}

REP. LANGE asked Ms. Koch about the ranking order of funds to be used for child support. **Ms. Koch** stated that restitution must first go to the victims, then to the crime victim's fund. Ms. Koch explained a scenario where an inmate had \$100 in a personal

account. She stated that DOC would take some out for child support right away and then take out for restitution. Whatever was left would go to the inmate. **REP. LANGE** stated child support should be delineated to ensure it takes priority over other things. **Ms. Koch** stated DOC is planning to enact administrative rules with child support ranked first, restitution second. **REP. CLARK** asked about mismanagement of inmate funds. **Ms. Koch** responded this legislation addresses this and alleviates any potential problems regarding mismanagement by DOC of inmate funds.

Closing by Sponsor:

REP. WEISS closed on HB 134 stating we all have to be accountable for our actions, whether in prison or not, to pay for things like restitution and child support.

{Tape: 3; Side: A; Approx. Time Counter: 106 - 219}

HEARING ON HB 116

Sponsor: **REP. CHRISTINE KAUFMANN, HD 53, Helena**

Opening Statement by Sponsor:

REP. KAUFMANN opened on HB 116 for the Department of Justice (DOJ). She explained that the DOJ created a Domestic Violence Fatality Review Commission (Commission) in response to incidents involving women who were killed in domestic disputes in Montana. She stated that the Commission only works on cold cases, meaning cases that are not being litigated. She described the Commission as consisting of 14 members that include victims advocates, law enforcement professionals, criminal justice officials, child protective service specialists, and forensic and medical personnel. The Commission tries to look at Communities that have suffered domestic fatalities in order to prevent similar future incidents. She described the purpose of HB 116 as to ensure that the Commission has access to information they need. She emphasized the Commission would only go into communities in which they are invited.

EXHIBIT (juh07a03)

{Tape: 3; Side: A; Approx. Time Counter: 221 - 283}

Proponents' Testimony:

Allie Bovingdon, Assistant Attorney General (AAG), supported HB 116 stating this Commission would review homicides involving domestic partners. This bill would allow the Commission to review information that would otherwise be confidential and beyond their reach.

Mathew Dale, Director of Office of Victim Services, supported HB 116. He stated five other states have Commissions and they all share a common purpose, to prevent domestic violence homicides and increase community awareness. He emphasized that although the perpetrator is the one at fault for the homicide, the Commission would help increase the safety net for other potential domestic violence victims. He stated that the Commission would work to create a culture of safety in order to review domestic violence deaths effectively, honestly, and openly.

{Tape: 3; Side: A; Approx. Time Counter: 284 - 360}

Brian Fisher, Officer Helena Police Department, supported HB 116 stating he is currently assigned to the violence against women investigation division. He described part of his job as investigating domestic violence, child abuse and sex related crimes. As a member of the Commission, he stated domestic violence leading to homicide has increased and touches every community in Montana. He stated he trains law enforcement officers and that many do not have a good grasp of domestic violence situations. He believes the Commission will come up with guidelines which eventually will greatly assist law enforcement and help reduce domestic violence.

{Tape: 3; Side: A; Approx. Time Counter: 368 - 415}

Allison Paul, Managing Attorney Domestic Violence Unit, Montana Legal Services (MLS), supported HB 116, stating she is also a member of the Commission. She stated MLS in Helena gets approximately 10 calls a week from people, primarily women, wanting to leave a violent relationship. She described their tales as "chilling" and that many of them are threatened with a gun, often in front of the children.

{Tape: 3; Side: A; Approx. Time Counter: 416 - 440}

Jim Campbell, Montana Association of Chiefs of Police, supported HB 116. He stated he is also on the Board at the Friendship Center that works with domestic violence and business is booming. He asked the Committee to support HB 116.

Beth Satre, Montana Coalition Against Domestic and Sexual Violence, supported HB 316. She stated domestic homicide needs to be dealt with before it is too late. She described eleven (11) domestic homicides in Montana since 2000.

REP. BRAD NEWMAN, HD 38, Butte, supported HB 116 stating this bill represents a low budget common sense way to involve a multiplicity of professionals in the review of domestic violence homicides. He mentioned the homicide/suicide Bardsley-Sullivan case, stating it involved the Butte and Missoula law enforcement personnel. He urged the Committee to look at the fiscal note to verify this is a low budget bill.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked **REP. KAUFMANN** whether she would be amenable to amending the bill regarding appointment of certain professionals.

REP. KAUFMANN stated that page one, line 18 allows the AG to appoint people among the categories outlined in that part of the bill. **Ms. Bovington, AG**, agreed with **REP. KAUFMANN** that the Attorney General may appoint people from the listed disciplines. She stated that although not mandatory, selecting members from the listed disciplines would bring a balance of expertise and experience to the Commission. **REP. HARRIS** expressed his concern over "creeping criminalization" in reference to information the Commission gets may be public information then years later a Commission writes a book, he could be prosecuted. **Ms. Bovington** responded that could be possible; that the Commission has very strict confidentiality requirements. **REP. HARRIS** stated that one of the purposes of the Commission is to educate the public and suppose a member gives a public speech on domestic violence; they could be subject to a criminal violation. **Ms. Bovington** explained it would be unlikely for that situation to occur but she would be amenable to changing that portion of the bill.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 129}

REP. THOMAS asked **REP. KAUFMANN** about the federal funding of four thousand dollars. **REP. KAUFMANN** stated this is a federal grant and would continue to fund the Commission.

REP. SALES asked what this bill would provide the Commission that they do not already have. **REP. KAUFMANN** stated this bill makes clear what the Commission may do and sets in place confidentiality concerns.

REP. MALCOLM asked **REP. KAUFMAN** about page one, line 19 regarding where the members come from. **REP. KAUFMANN** replied that portion means that members on the Commission may be selected from among the disciplines but it is not mandatory.

REP. FACEY asked Ms. Bovington whether a Commission report should go to the Department of Public Health and Human Services (DPHHS). **Ms. Bovington** stated that would be a good idea and language could be drafted to that effect.

{Tape: 3; Side: B; Approx. Time Counter: 182 - 197}

CHAIRMAN SHOCKLEY commented on the Sullivan tragedy stating that Kathy Sullivan was murdered by her husband who was the superintendent of schools in Silverbow County. Mrs. Sullivan was a student in Missoula. Mrs. Sullivan had a temporary restraining order (TRO) against her husband in Silverbow County, because he was stalking her. Missoula police did not contact Silverbow County and Mr. Sullivan stalked and murdered her.

{Tape: 3; Side: B; Approx. Time Counter: 197 - 216}

Closing by Sponsor:

REP. KAUFMANN closed on HB 116. She spoke about the silent witness program involving 36 people, each representing a domestic homicide victim, and to watch for their presence at the Capitol, during the session. She explained the silent witnesses would be wearing on their backs, the victim's story. She stated HB 116 is one thing Montana can do to help with domestic violence.

EXECUTIVE ACTION ON HB 116

Motion: **REP. CLARK** moved **HB 116 DO PASS.**

{Tape: 3; Side: B; Approx. Time Counter: 265 - 266}

Motion: **REP. HARRIS** moved that **HB 116 BE AMENDED.**

Discussion:

REP. HARRIS stated his concern about "creeping criminalization." **John McMaster** revised the language to address those concerns and read the new language.

Vote: Motion carried unanimously, voice vote.

Motion: **REP. HARRIS** moved that **HB 116 DO PASS AS AMENDED.**

Discussion:

The House Judiciary Committee discussed the language of HB 116 regarding the AG's job of appointing members from suggested disciplines. **John McMaster** voiced his belief that the AG must appoint members from each discipline. He suggested some new language to clear this matter up. **REP. MALCOLM** voiced his concern on this issue as well. **REP. PARKER** suggested language to specifically lay out this in statute. **REP. CLARK** stated the bill's primary purpose is to give the Commission more information to study domestic homicides. **REP. NEWMAN** reiterated this position adding that the AG's office should have discretion on who they appoint and not be micro-managed. He stated the language in the bill is permissive not mandatory and the AG may choose from among the suggested groups.

Motion/Vote: **REP. LANGE** moved that **HB 116 BE FURTHER AMENDED**. **Motion carried 11-7 with CLARK, FACEY, PARKER, GALLUS, GUTSCHE, HARRIS, and NOENNIG voting no** by voice vote. (Staff Attorney, John McMaster would draft wording for amendment.)

Motion/Vote: **REP. CLARK** moved that **HB 116 DO PASS AS AMENDED**. **Motion carried 12-6 with EVERETT, GUTSCHE, LASZLOFFY, MALCOLM, RICE, and SALES voting no** by roll call vote.

{Tape: 4; Side: A; Approx. Time Counter: 109 - 129}

EXECUTIVE ACTION ON HB 77

Motion: **REP. GUTSCHE** moved that **HB 77 DO PASS**.

Motion: **REP. SHOCKLEY** moved that **HB 77 BE AMENDED**.

Discussion:

REP. SHOCKLEY described some amendments to HB 77 stating he conferred with **REP. JENT** and Attorney General McGrath. He suggested amending language that the person does not have to have plead guilty to anything, and in this regard the word nolo contender would be inserted. He stated in other words that the person could plead guilty, be convicted, and still have the right to proceed. The Committee discussed this and other suggestions to improve the bill. He stated if there is evidence out there that could exonerate a convicted person, then it should go forward and that **REP. JENT** agreed. **REP. SHOCKLEY** discussed when a case becomes final and that the judge would get the final say

where controversy exists over which lab to use. **REP. GALLUS** asked REP. SHOCKLEY to repeat the amendment.

Motion/Vote: **REP. CLARK** moved that **HB 77 BE INDEFINITELY POSTPONED. Motion carried unanimously.**

{Tape: 4; Side: A; Approx. Time Counter: 145 - 415}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh07aad)